

**Laidlaw Transit, Inc. and Teamsters Local Union
No. 413, an affiliate of the International Brotherhood of Teamsters, AFL-CIO, Petitioner.
Case 9-RC-16592**

January 22, 1997

DECISION AND DIRECTION

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

The National Labor Relations Board, by a three-member panel, has considered objections to and determinative challenges in an election held on September 15, 1995, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 23 votes for and 23 against the Petitioner, with 5 challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, and has decided to adopt the hearing officer's findings and recommendations only to the extent consistent with this Decision and Direction.

1. We agree with the hearing officer's recommendation to overrule the Petitioner's challenges to the ballots of Chester Beddow and Douglas Dodd, and we shall direct that their ballots be opened and counted.¹ In doing so, however, we do not rely on the reasoning of the hearing officer, but rather we find that Beddow and Dodd are properly included in the unit because they come within the unambiguous unit description contained in the Stipulated Election Agreement.

The Employer provides bus service for a school system in central Ohio. The parties executed a Stipulated Election Agreement which set forth the appropriate bargaining unit as follows:

All employees employed by the Employer for Pickerington Schools at its facility at 122 Hill Road South, Pickerington, Ohio, but excluding all dispatchers, all office clerical employees and all professional employees, guards and supervisors as defined in the Act.

Beddow and Dodd are employed by the Employer as mechanics. The Petitioner challenged their ballots on the ground that they are not employed in the stipulated unit, which the Petitioner contends includes only drivers. The Employer contends that both of the mechanics are properly included in the unit.

At the outset of his decision, the hearing officer stated as follows:

¹ We also adopt the hearing officer's recommendation that the Petitioner's withdrawal of its challenge to the ballot of Susan Moon be approved. Prior to the hearing, the parties agreed that two of the challenged voters—employees Judy Green and Rita Harrison—were eligible voters. Accordingly, the Acting Regional Director has recommended that their ballots be opened and counted.

As noted in footnote no. 2 of the Acting Regional Director for Region 9's Report, a review of the Regional Office file indicated that notwithstanding the language contained in the unit description in the Stipulated Election Agreement, the Petitioner opposed the inclusion of mechanics in the unit prior to the approval of the Agreement. The Parties agreed for the purpose of the election simply neither to include nor exclude mechanics from the unit description and to allow the mechanics to vote subject to challenge.

The hearing officer then proceeded to analyze the two mechanics' job skills and functions, and their terms and conditions of employment. The hearing officer found that there is considerable functional integration among the drivers and mechanics, and that both groups engage in identical minor maintenance work on the buses, utilizing the same tools. The hearing officer concluded that the record shows that the drivers and mechanics: (1) share common supervision; (2) possess similar employee skills; and (3) have a substantial amount of contact during the workday. Consequently, the hearing officer found that Beddow and Dodd share a "close" community of interest with the drivers, and he recommended that the challenges to their ballots be overruled.

We agree that Beddow and Dodd are eligible voters, but find that it was unnecessary for the hearing officer to engage in a community-of-interest analysis in the circumstances here. Instead, we find that it is appropriate to bind the parties to the agreement that they reached on the composition of the unit when they executed the election stipulation. By its terms, that agreement includes the mechanics in the stipulated unit.

It is well-settled Board policy that a Stipulated Election Agreement is a binding contract to which the parties will be held, and that if the unit description of that agreement is expressed in clear and unambiguous terms, the Board will not examine extrinsic evidence to determine the parties' intent regarding bargaining unit composition. *Gala Food Processing*, 310 NLRB 1193 (1993).

The unit stipulation at issue here is clear and unambiguous on its face. It includes "all employees" with the express exception of dispatchers, office clerical employees, professional employees, and guards and supervisors. Thus, mechanics clearly are included in the stipulated unit. Because the unit description is unambiguous, there is no need to resort to extrinsic evidence to determine the parties' intent.

Contrary to the hearing officer's suggestion by his reference to the footnote in the Acting Regional Director's underlying decision directing the hearing, there is no proof that the parties agreed that the status of the two mechanics would be resolved by the challenge procedure, rather than defined by the clear and unam-

biguous terms of the unit description. The Acting Regional Director's statement that there is an indication in an unattached Regional Office file that the Petitioner had "opposed" inclusion of the mechanics is insufficient to nullify the Petitioner's subsequent signing of the stipulation to the contrary. The Stipulated Election Agreement contains nothing which conditions or modifies the plain meaning of the stipulated unit description. Accordingly, we agree that Beddow and Dodd should be included in the unit, and their votes be opened and counted.

2. We do not agree, however, with the hearing officer's recommendations that the Employer's objection to the election should be sustained and that a new election should be conducted if the ballot of employee Dorothy Ford remains determinative after the challenged ballots have been opened and counted. Accordingly, we shall order the Regional Director to issue the appropriate certification after the challenged ballots have been disposed of and a revised tally has issued.

The Employer's objection to the election alleges that the Board agent who conducted the election failed to properly instruct the parties' election observers concerning the procedure for challenging ballots and, as a result of that failure, Dorothy Ford, a voter whom the Employer intended to challenge, was able to cast her ballot and it was commingled with valid ballots.

The record shows that at the preelection conference on the day of the election, the Board agent told the observers for both parties that if they wanted to challenge a voter, they were required to notify her before the challenged ballot was placed in the ballot box so that she could place the ballot into a separate envelope. The Board agent emphasized to the observers that once a voter's ballot was placed in the box, it was too late to challenge that voter. In addition, the Board agent informed the observers that when a voter approached the table and stated his or her name, the observer should tell the Board agent at that time if the voter was being challenged. The Board agent also distributed a Board-prepared form containing instructions for election observers, including the procedure for challenging voters.²

The Employer's election observer, Pamela Culp, testified that when employee Dorothy Ford presented herself to the observers to vote, her name was checked off the list of eligible voters and she was given a ballot. Culp further testified that as Ford was approaching the ballot box after leaving the voting booth, Culp announced that the Employer wished to challenge Ford, but simultaneously with this announcement, Ford

dropped her ballot into the box. According to Culp, the Board agent then said to her, "Don't you understand, you have to let me know when a name is checked off if it is to be a challenge."

The Board agent's testimony regarding this incident was essentially the same as Culp's in all material respects. The Board agent testified that as Ford approached the ballot box, Culp stated, "You know the Company wants to challenge her." On hearing Culp's statement, the Board agent turned to Ford and saw her drop her ballot into the box. The Board agent testified that she reminded Culp that she had to make her aware of a challenge before a voter put the ballot into the box, and that Culp responded, "Didn't they already tell you who they want to challenge?" The Board agent asked if Culp meant by "they" the Employer's representatives, and Culp replied that she did. The Board agent answered that she had no idea who either party wanted to challenge and that Culp must let her know before the ballot is placed in the box.

Despite the fact that the hearing officer did not find that the Board agent's instructions to the observers were deficient, the hearing officer concluded that in order to "guard and protect the integrity of [the Board's] election processes," the election must be set aside if Ford's vote could affect the results of the election.

We reverse. Here, the Board agent gave the proper instructions to the Employer's observer regarding the method of challenging a voter's ballot, and otherwise did not engage in any misconduct or negligence. The Employer's observer had the opportunity to challenge Ford's vote in a proper and timely manner, but failed to do so. The Employer's failure to challenge Ford's ballot before it was deposited in the ballot box was caused solely by the Employer observer's inattentiveness or failure to follow the Board agent's clear instructions. In these circumstances, we find that it would not be appropriate to set aside the election based on an objection filed by the Employer which involves entirely the Employer observer's failure to challenge a voter in a timely and proper manner. Accordingly, we find that the fact that Ford's ballot was commingled with the other ballots does not warrant a new election if Ford's vote would be determinative.

DIRECTION

IT IS DIRECTED that, within 14 days from the date of this Decision and Direction, the challenged ballots of Chester Beddow, Douglas Dodd, Rita Harrison, Judy Green, and Susan Moon shall be opened and counted by the Regional Director and that a revised tally of ballots be issued.

IT IS FURTHER DIRECTED that if the revised tally of ballots reveals that Teamsters Local Union No. 413, an affiliate of the International Brotherhood of Teamsters,

²There was a conflict in the testimony concerning which of two versions of this preprinted form was distributed by the Board agent. The hearing officer found it unnecessary to resolve this conflict, and we agree that a determination of which particular form was distributed is not necessary to resolve the issue raised by the objection.

AFL-CIO (the Petitioner) has received a majority of the valid ballots cast, the Regional Director shall issue a certification of representative. If, however, the re-

vised tally shows that the Petitioner has not received a majority of the ballots cast, the Regional Director shall issue a certification of results of election.

